

# **EXHIBIT B**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

HASSAN CHUNN; NEHEMIAH McBRIDE;  
AYMAN RABADI, by his Next Friend  
MIGDALIZ QUINONES; and JUSTIN  
RODRIGUEZ, by his Next Friend JACKLYN  
ROMANOFF,

individually and on behalf of all others similarly  
situated,

Petitioners,

*-against-*

WARDEN DEREK EDGE,

Respondent.

20 Civ. 1590

**DECLARATION OF  
JONATHAN GIFTOS, M.D.**

I, Jonathan Giftos, hereby declare as follows:

1. I am a doctor duly licensed to practice medicine in the State of New York. I am board certified in internal medicine and addiction medicine.

2. I am currently the Medical Director of Addiction Medicine & Drug User Health at Project Renewal and a Clinical Assistant Professor in the Department of Medicine at Albert Einstein College of Medicine. I was previously the Clinical Director of Substance Use Treatment for NYC Health & Hospitals, Division of Correctional Health Services at Rikers Island. In that capacity I was responsible for the diversion, harm reduction, treatment and reentry services for incarcerated patients with substance use disorders. I further served as the medical director of the Key Extended Entry Program (KEEP), the nation's oldest and largest jail-based opioid treatment program that provides methadone and buprenorphine to incarcerated patients with opioid use

disorders. I successfully led an effort to remove non-clinical barriers to opioid treatment program enrollment in 2017, which dramatically expanded treatment access from 25% to over 80%, while also reducing post-release mortality for people with opioid use disorder.

3. I have extensive experience working with vulnerable populations such as the incarcerated and those experiencing homelessness.

4. I submit this Declaration in support of the Plaintiffs' Petition for Habeas Corpus seeking release of incarcerated people at the Brooklyn Metropolitan Detention Center ("MDC") who meet the CDC's definition of vulnerable and seeking other relief to mitigate risk for the remaining population of the MDC during the COVID-19 pandemic.

#### **I. Coronavirus Epidemic in New York City**

5. On March 11, 2020, the World Health Organization declared that the rapidly spreading outbreak of COVID-19, a respiratory illness caused by a novel coronavirus, is a pandemic, announcing that the virus is both highly contagious and deadly.<sup>1</sup> To date, the virus is known to spread from person-to-person through respiratory droplets, close personal contact, and from contact with contaminated surfaces and objects.<sup>2</sup> The CDC also warns of "community spread" where the virus spreads easily and sustainably within a community where the source of the infection is unknown.<sup>3</sup> Experts are still learning how it spreads.

6. As of March 27, 2020, novel coronavirus has infected over 586,140 people, leading to 26,865 deaths worldwide.<sup>4</sup> In the United States, there are at least 97,226 confirmed cases and

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<sup>1</sup> World Health Organization, Media Briefing on March 11, 2020: <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

<sup>2</sup> Centers for Disease Control and Prevention, Coronavirus Disease 2019: *How it Spreads*, <https://www.cdc.gov/coronavirus/2019-ncov/prepare/transmission.html>

<sup>3</sup> *Id.*

<sup>4</sup> Johns Hopkins University Coronavirus COVID-19 Global Cases by the Center for Systems Science and Engineering, <https://coronavirus.jhu.edu/map.html>.

there have been at least 1,478 deaths.<sup>5</sup> There are confirmed coronavirus cases in every state, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.

7. Governor Cuomo declared a State of Emergency in New York State on March 7, 2020. Mayor De Blasio declared a State of Emergency in New York City on March 12, 2020. On March 20, 2020, Governor Cuomo issued an Executive Order entitled “New York State on PAUSE,” requiring businesses to close and banning gatherings. As of March 27, 2020, there are 44,745 positive cases in New York State with more than 25,000 of those cases being in New York City.<sup>6</sup> To date, there have been 519 deaths from COVID-19 just in New York, with 366 of those deaths in New York City. Among the positive cases in New York City are incarcerated people, as well as people who work in courthouses, law enforcement, legal offices, and the medical field, increasing the likelihood of further exposure to and by incarcerated people.

8. There is currently no vaccine or cure. The primary focus is on preventing the spread of the virus at this juncture. To prevent new infections, the Centers for Disease Control and Prevention strongly recommend the following actions: thorough and frequent handwashing, cleaning surfaces with EPA approved disinfectants, keeping at least 6 feet of space between people, and avoiding group settings.<sup>11</sup> Social distancing has also been strongly recommended to slow the rate of COVID-19 infections so that hospitals have the resources to address infected individuals with urgent medical needs.<sup>12</sup> The President’s *Coronavirus Guidelines for America*, to slow the spread of the coronavirus, warns that social gatherings in groups of more than 10 people should be

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>11</sup> *How to Protect Yourself*, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html>.

<sup>12</sup> *Coronavirus, Social Distancing, and Self-Quarantine*, Johns Hopkins Medicine, <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/coronavirus-social-distancing-and-self-quarantine>.

avoided.<sup>13</sup> In correctional settings, such sanitation, social distancing, and self-quarantining measures are nearly impossible especially when inmates are routinely shackled and escorted with other prisoners.<sup>14</sup>

**Certain Identifiable Populations Are Far More Vulnerable To COVID-19 Than The Population At Large Is.**

9. The Centers for Disease Control have identified two groups of people at higher risk of contracting and succumbing to COVID-19: adults over 60 years old and people with chronic medical conditions.<sup>15</sup>

10. COVID-19 is more dangerous to persons in these high-risk groups than to the general population. Older people who contract COVID-19 are more likely to die than people under the age of 60. In a February 29<sup>th</sup> WHO-China Joint Mission Report, the preliminary mortality rate analyses showed that individuals age 60-69 had an overall 3.6% mortality rate and those 70-79 years old had an 8% mortality rate.<sup>16</sup> For individuals 40 years and younger, the mortality rate was as low as .2%. It has been found that older people diagnosed with COVID-19 are more likely to be very sick and require hospitalization to survive because the acute symptoms include respiratory distress, cardiac injury, arrhythmia, septic shock, liver dysfunction, kidney injury and multi-organ failure. Access to a mechanical ventilator is often required, as is the ability to be intubated quickly. . People with chronic medical conditions (no matter their age) are also at significantly greater risk

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<sup>13</sup> *The President's Coronavirus Guidelines for America*, [https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20\\_coronavirus-guidance\\_8.5x11\\_315PM.pdf](https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf).

<sup>14</sup> *See We Are Not a Hospital: A Prison Braces for the Coronavirus*, New York Times, March 18, 2020, <https://www.nytimes.com/2020/03/17/us/coronavirus-prisons-jails.html>.

<sup>15</sup> *If You Are at Higher Risk*, Centers for Disease Control and Prevention, <https://tinyurl.com/vtbebzcz>; *see also Report of the WHO-China Joint Mission on Coronavirus Disease (COVID-19)*, <https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf> at 12.

<sup>16</sup> *Age, Sex, Existing Conditions of COVID-19 Cases and Deaths Chart*, <https://www.worldometers.info/coronavirus/coronavirus-age-sex-demographics/> (data analysis based on WHO-China Joint Mission Report, *supra*).

from COVID-19 because their already-weakened systems are less able to fight the virus. These chronic medical conditions include lung disease, cancer, heart failure, cerebrovascular disease, renal disease, liver disease, diabetes, immunocompromising conditions, and pregnancy. Those with pre-existing medical conditions have a higher probability of death if infected. The WHO-China Joint Mission Report provides that the mortality rate for those with cardiovascular disease was 13.2%, 9.2% for diabetes, 8.4% for hypertension, 8.0% for chronic respiratory disease, and 7.6% for cancer.<sup>17</sup>

In a March 17<sup>th</sup> *Washington Post* article tracking the 100 United States COVID-19 deaths, it is reported that many of the fatalities had underlying medical conditions, which made it harder for their bodies to fight off COVID-19. And nearly all — about 85 percent — were older than 60; about 45 percent were older than 80.<sup>18</sup>

### **Correctional Settings Increase The Risk Of Transmission**

11. Correctional settings increase the risk of contracting an infectious disease, like COVID-19, due to the high numbers of people with chronic, often untreated, illnesses housed in a setting with minimal levels of sanitation, limited access to personal hygiene, limited access to medical care, and no possibility of staying at a distance from others. Correctional facilities house large groups of people together, and move them in groups to eat, do recreation, and go to court. They frequently have insufficient medical care for the population, and, in times of crisis, even those medical staff cease coming to the facility. Hot water, soap and paper towels are frequently in limited supply. Incarcerated people, rather than professional cleaners, are responsible for

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<sup>17</sup> *Report of the WHO-China Joint Mission on Coronavirus Disease (COVID-19)*, <https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf> at 12.

<sup>18</sup> *U.S. Coronavirus Death Toll Reaches 100*, The Washington Post, March 17, 2020, at [https://www.washingtonpost.com/national/us-coronavirus-death-toll-reaches-100/2020/03/17/f8d770c2-67a8-11ea-b313-df458622c2cc\\_story.html](https://www.washingtonpost.com/national/us-coronavirus-death-toll-reaches-100/2020/03/17/f8d770c2-67a8-11ea-b313-df458622c2cc_story.html).

cleaning the facilities and often not given appropriate supplies. This means there are more people who are susceptible to getting infected all congregated together in a context in which fighting the spread of an infection is nearly impossible.

12. Outbreaks of the flu regularly occur in jails, and during the H1N1 epidemic in 2009, many jails and prisons dealt with high numbers of cases.<sup>19</sup>

13. In New York, one of the areas of early spread in the U.S., multiple correctional officers and individuals detained in jails and prisons have become infected with COVID-19. The medical leadership in the NYC jail system has announced that they will be unable to stop COVID from entering their facilities and have called for release as the primary response to this crisis. Staff are likely to bring COVID-19 into a facility, based solely on their movement in and out every day.

14. Once COVID-19 is inside a facility, MDC will be unable to stop the spread of the virus throughout the facility given long-documented inadequacies in BOP's medical care and in light of how these facilities function. Incarcerated people in New York City have already begun to test positive for COVID-19. Among the 5,200 people incarcerated by the New York City Department of Correction, seventy-five people in city custody have tested positive for coronavirus.<sup>20</sup> This is a higher rate of infection than seen outside of detention facilities and is consistent with my opinion that correctional settings create a heightened risk. As of March 26, 2020, at least four people in BOP custody in New York City, including one at MDC, have tested positive.<sup>23</sup> At least four BOP staff members in New York City, including three at MDC, have also tested positive. Specific Conditions At MDC Brooklyn

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<sup>19</sup> *Prisons and Jails are Vulnerable to COVID-19 Outbreaks*, The Verge (Mar. 7, 2020) at <https://bit.ly/2TNcNZY>.

<sup>20</sup> <https://abcnews.go.com/US/releases-infections-fear-us-coronavirus-crisis-jails-prisons/story?id=69803066>

<sup>23</sup> <https://www.bop.gov/coronavirus/>

15. Based on my understanding of the specific conditions at the federal pre-trial detention center in Brooklyn (“MDC Brooklyn”) as contained in published reports and communicated to me by Deirdre D. von Dornum, Attorney-in-Charge of the Federal Defenders of New York, these conditions pose heightened risks to already vulnerable inmates of contracting the novel coronavirus and of developing acute symptoms from the virus.

16. The size of the population and the conditions of confinement at MDC Brooklyn increase the risk of infection substantially because it is impossible for inmates to maintain a 6-foot distance from others, to avoid large groups, or to implement sufficient hand-washing and sanitization of surfaces.

a. Approximately 1700 people are incarcerated at the MDC. I have learned that 537 of them were identified by MDC as being particularly vulnerable as that has been defined by the CDC.<sup>24</sup>

b. New people are brought into custody at MDC Brooklyn from all over the world each week. They are screened only for fever and recent travel to designated hotspot countries.<sup>25</sup>

c. Correctional officers who live in New York, New Jersey, and Pennsylvania come in and out of the facility each day.<sup>26</sup> Significantly, in a March 18<sup>th</sup> CDC report, an epidemiological investigation revealed that coronavirus-infected staff members contributed to the outbreak in a nursing home facility with ineffective infection control and prevention and staff

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<sup>24</sup> See “Review and Inspection of Metropolitan Detention Center Brooklyn Facilities Issues and Related Impact on Inmates,” OIG Report (Sept. 2019), at 1 (MDC Brooklyn houses approximately 1700 pretrial and designated inmates); Communication with Deirdre von Dornum (confirming 537 people identified as a heightened risk).

<sup>25</sup> Federal Defenders of N.Y. Telephone Conversation With MDC Legal (March 17, 2020).

<sup>26</sup> *Id.*



members working in multiple facilities.<sup>27</sup> The Seattle nursing home outbreak demonstrates that individuals with underlying health conditions and advanced age, in a shared location, are at a high risk of death, especially when resources and staffing become inadequate.<sup>28</sup>

d. At MDC Brooklyn, people are housed either in small two-man cells (designed to hold a single person) with a single shared toilet and sink or in large open dormitory units housing up to 70 people with shared toilets and sinks.<sup>29</sup> Windows in the units do not open. Incarcerated people cannot go outside.

e. No hand sanitizer is available to people incarcerated at MDC Brooklyn.<sup>30</sup>

f. Tissues are not readily available. People at MDC use toilet paper to blow their noses.

g. Everyone is given one small bar of soap a week, at most. Some units at MDC have received no soap since the lockdown of the facility began on March 13, 2020. Access to additional soap is limited to those individuals who have sufficient commissary funds to purchase it, and dependent on the commissary being open; it is routinely closed during lockdowns.

h. Incarcerated people prepare all the meals and this meal preparation, with the exception of kosher and halal meals, is performed in a single kitchen.<sup>31</sup>

i. Incarcerated people at MDC eat meals in large groups.<sup>32</sup>

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<sup>27</sup> *COVID-19 in a Long-term Care Facility—King County Washington, February 27-March 9, 2020*, <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6912e1-H.pdf>.

<sup>28</sup> *Id.*

<sup>29</sup> See “Review and Inspection of Metropolitan Detention Center Brooklyn Facilities Issues and Related Impact on Inmates,” OIG Report (Sept. 2019) (describing housing units).

<sup>30</sup> Statement of Associate Warden Andy Cruz at EDNY Security Committee Meeting (March 11, 2020).

<sup>31</sup> “Review and Inspection of Metropolitan Detention Center Brooklyn Facilities Issues and Related Impact on Inmates,” OIG Report (Sept. 2019), at 4 (all meals are prepared by inmates who work for Food Services in a central kitchen area).

<sup>32</sup> “Review and Inspection of Metropolitan Detention Center Brooklyn Facilities Issues and Related Impact on Inmates,” OIG Report (Sept. 2019).

j. Incarcerated people are responsible for sanitizing the housing unit common areas, and frequently lack adequate cleaning supplies to do so.

k. Individuals who are at lower and higher risks (because of age and pre-existing medical conditions) of contracting the virus are not separated.<sup>33</sup>

l. The facility has not informed the population of what the protocol will be for symptomatic inmates;<sup>35</sup> absent a transparent protocol, individuals in correctional settings often fear they will be confined in solitary if they volunteer that they are symptomatic.

m. MDC Brooklyn currently has no more than nine COVID-19 test kits.

17. People at MDC Brooklyn who do contract COVID-19 are at higher risk for developing acute symptoms than if they were in the community, because MDC Brooklyn lacks the medical resources to care for symptomatic inmates.

a. There is no separate medical unit or facility for ill people.<sup>36</sup> Unlike many Federal Correctional Institutions and even Rikers' Island, MDC Brooklyn has no physical space in which someone who is ill can convalesce that is separate from others, warm, clean and has access to fresh water and regular hand-washing.

b. On weekdays, there are only three doctors available at MDC Brooklyn to care for all 1700 people held in custody there. Even this highly limited number is likely to decrease as doctors themselves go into quarantine. None of these doctors specialize in infectious diseases.

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<sup>33</sup> Statement of Associate Warden Andy Cruz at EDNY Security Committee Meeting (March 11, 2020).

<sup>35</sup> *Id.*

<sup>36</sup> Statement of Associate Warden Andy Cruz at EDNY Security Committee Meeting (March 11, 2020).

c. People who contract COVID-19 can deteriorate rapidly, even before a test result can be received. They need constant monitoring. Most people in the higher risk categories will require more advanced support: positive pressure ventilation, intubation and in extreme cases, extracorporeal mechanical oxygenation. Such care requires specialized equipment in limited supply as well as an entire team of specialized care providers. MDC Brooklyn does not have that specialized equipment or specialized providers.

18. MDC Brooklyn is already short-staffed.<sup>37</sup> This staffing shortage will only increase as employees need to stay home to care for children whose schools are closed, elderly family members, and other personal health situations. This has already been observed in other law enforcement settings and will inevitably occur at MDC. There will be far more work to be done inside MDC than before, and the lack of available staffing will impact basic operations, as well as the ability to cohort high risk and symptomatic patients (in different areas) as well as provide care inside the facility and even conduct escort for emergency room evaluation and inpatient hospitalization. With fewer staff, correctional officers are less able to monitor inmates' health.

### **Reducing Population Size At Specific Correctional Facilities Is A Crucial Public Health Measure**

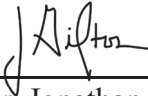
19. Every effort should be made to reduce chances of exposure to the novel coronavirus; however given the proximity and high number of incarcerated people, correctional staff, and healthcare workers at pre-trial detention facilities, it will be extremely difficult to sustain such efforts. Reducing population, therefore, is an urgent priority in detention facilities during this national public health emergency.

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<sup>37</sup> "Review and Inspection of Metropolitan Detention Center Brooklyn Facilities Issues and Related Impact on Inmates," OIG Report (Sept. 2019).

I declare under penalty of perjury declare and pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

Dated: Brooklyn, New York  
March 27, 2020

 3/27/2020  
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Dr. Jonathan Giftos